

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CRIMINAL CASE NO. 1:08-cr-00101-MR-1
(CIVIL CASE NO. 1:16-cv-00147-MR)**

UNITED STATES OF AMERICA,

Plaintiff,)

vs.

FRANKIE LAMAR MOORE, JR.,)

Defendant.)

ORDER

THIS MATTER is before the Court on the parties' Joint Motion for Amended Judgment Imposing a 120-Month Sentence [Criminal Case No. 1:08-cr-00101-MR-1 ("CR"), Doc. 26].

On March 16, 2018, this Court granted the Defendant's motion to vacate his sentence in light of the Supreme Court's decision in Johnson v. United States, 135 S.Ct. 2551 (2015). [CR Doc. 23]. A separate Order was entered directing the transport of the Defendant to this District and scheduling a resentencing hearing [CR Doc. 24].

The Court has determined that the Defendant has presently been incarcerated for a period of 114 months pursuant to his conviction in this matter. Considering that factor and all the other factors in this case, and for

the reasons as expressed in the Court's opinion regarding the Defendant's motion pursuant to § 2255, the Court determines that all of the factors for sentencing as set out in 18 U.S.C. § 3553(a) are fulfilled by a sentence of Time Served.

In their joint motion, the parties "waive any and all rights they may have to request . . . a hearing" on resentencing. [Doc. 26 at 2]. Thereby the Defendant also waives his right to appear at his resentencing. Under these circumstances it is not necessary or helpful to the Court to await the preparation of a supplemental Presentence Report in this case before providing a revised sentence and amended judgment. Therefore, the Court will direct the preparation of an amended judgment for a Time Served sentence with three years of supervised release pursuant to this Order. All other terms of the Defendant's original Judgment shall remain in effect.

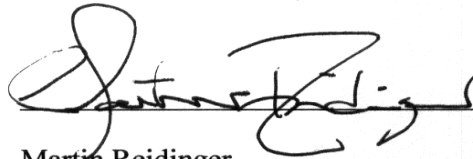
Accordingly, **IT IS, THEREFORE, ORDERED** that the parties' Joint Motion for Amended Judgment Imposing a 120-Month Sentence [CR Doc. 26] is **GRANTED IN PART**, and the Defendant is hereby sentenced to a term of **TIME SERVED**. The Clerk shall prepare an Amended Judgment imposing said sentence of Time Served and three years of supervised release, with all remaining provisions of the Judgment [CR Doc. 16] remaining in full force and effect.

IT IS FURTHER ORDERED that the Order entered March 16, 2018, directing the transport of the Defendant to this District for resentencing [CR Doc. 24] is **VACATED**.

The Clerk of Court is directed to certify copies of this Order to counsel for the Government, counsel for the Petitioner, the United States Bureau of Prisons, the United States Marshals Service, and the United States Probation Office.

IT IS SO ORDERED.

Signed: April 11, 2018


Martin Reidinger
United States District Judge

